

### Claims

Claims 1-12 are pending.

Applicant thanks the Examiner for indicating that claims 6-7 and 12 include allowable subject matter.

Claims 1-4 and 8-11, however, were rejected as unpatentable over the combination of U.S. Patent No. 5,796,094 (Schofield et al.) in view of DE 19953447 (Zander). As discussed below, applicant respectfully requests reconsideration.

The Schofield et al. patent discloses a vehicle headlamp controller that identifies different types of light sources ahead of the vehicle (*e.g.*, headlights of an oncoming vehicle or tail lights of a leading vehicle) based on the spectral make-up of the sensed lights. Depending on the identification of the sensed lights, the intensity or pattern of the beam of the vehicle's headlamp may be adjusted. Although the Schofield et al. patent suggests distinguishing between (i) light sources that are close to the vehicle and (ii) light sources that are distant from the vehicle (col. 9, lines 35-50), it does not disclose or suggest determining the actual distance between two vehicles.

The German reference (as understood from the English-language abstract) discloses adjusting the light intensity of brake lights or tail lights of a first vehicle based on the distance from another vehicle traveling *behind* the first vehicle. Therefore, in contrast to the Schofield patent, which relates to situations in which an object is in front of the vehicle, the German reference relates to situations in which an object is behind the vehicle.

Furthermore, even if there were some motivation, in view of the German reference, to modify the Schofield et al. patent so as to detect the distance between a first vehicle and the headlights or tail lights of another vehicle in front of the first vehicle, other limitations of the pending claims are not disclosed or suggested. For example, there is no suggestion of varying the luminous intensity distribution according to the vehicle-to-vehicle distance "when the speed of the first vehicle exceeds a predetermined value" as recited in independent claims 1 and 8.

The only mention in the cited references of the vehicle's speed appears in the Schofield et al. patent (at col. 3, lines 58-64) which states:

In particular embodiments, . . . module 16 may supply data to imaging control circuit 13, such as the speed of the vehicle, which may be combined with the data sensed by imaging sensor 14 in establishing the state of the headlight 18.

In contrast to the pending claims, there is no disclosure or suggestion of how the state of the headlight should be adjusted based on the vehicle-to vehicle distance and the vehicle's speed. Therefore, there is no "clear and particular" suggestion, as required by the Court of Appeals for the Federal Circuit, for modifying the prior art to obtain the claimed subject matter. *See, e.g., C.R. Bard, Inc. v. M3 Sys., Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998); *Teleflex, Inc. v. Ficosa North Am. Corp.*, 63 USPQ2d 1374 at 1387 (Fed. Cir. 2002).

Furthermore, there is absolutely no suggestion of the particular limitations in the rejected dependent claims. The contrary conclusions in the Office action are based on precisely the type of improper hindsight that the Federal Circuit has warned against:

Our case law makes clear that the best defense against hindsight-based obviousness analysis is the rigorous application of the requirement for a showing of a teaching or motivation to combine the prior art references. *See Dembiczak*, 175 F.3d at 999, 50 USPQ2d at 1617. "Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight." *Id.*

*Ecolochem, Inc. v. Southern California Edison Co.*, 56 USPQ2d 1065, 1072-73 (Fed. Cir. 2000) (underlining added). As noted above, the showing of the motivation to combine must be "clear and particular." That is simply not the situation here.

### Conclusion

In view of the foregoing remarks, applicant respectfully requests reconsideration and withdrawal of the rejections of claims 1-4 and 8-11.

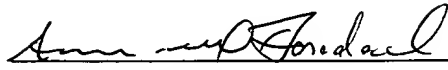
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Serial No. : 09/897,324  
Filed : July 2, 2001  
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Attorney's Docket No.: 10973-051001 / K43-  
134458M/SMI

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: 7/2/04

  
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